

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JESSE SOLOMON,

Plaintiff,

vs.

Case No. 1:14-cv-3570-MJG

THE BERT BELL/PETE ROZELLE NFL
PLAYER RETIREMENT PLAN and
THE NFL PLAYER SUPPLEMENTAL
DISABILITY PLAN,

Defendants.

ANSWER TO PLAINTIFF'S COMPLAINT

Defendants answer the allegations set forth in Plaintiff's Complaint, paragraph by paragraph, as follows:

1. Paragraph 1 contains conclusions of law that require no response. To the extent a response is required, Defendants admit that this is an ERISA denial-of-benefits case, brought pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), in which Plaintiff seeks various forms of relief against two separate pension and/or welfare benefit plans: (1) The Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Retirement Plan"), and (2) The NFL Player Supplemental Disability Plan ("Supplemental Plan," currently known as the NFL Player Disability & Neurocognitive Benefit Plan). Defendants deny that Plaintiff is entitled to any of the relief he seeks.

2. Denied. Answering further, to the extent that Plaintiff relies upon selective quotes from certain documents in the administrative record to support his allegations, Defendants deny Plaintiff's characterization of those quotes/documents, which when presented in proper context will speak for themselves. To the extent Plaintiff quotes from and/or relies upon documents outside the administrative record, Defendants reserve the right to strike those documents and any allegations based upon them.

3. Defendants admit that the Retirement Plan was established through collective bargaining between the National Football League Players Association and the National Football League Management Council to provide various retirement, disability, and related benefits to eligible professional football players ("Players") and their beneficiaries. Defendants admit that the Retirement Plan provides what some might call "generous" total and permanent disability ("T&P") benefits to Players who demonstrate that they are totally and permanently disabled, for any reason, under the terms of the Retirement Plan. Defendants admit that there are four categories of T&P benefits for Players awarded T&P benefits prior to September 1, 2011: (1) Active Football, (2) Active Nonfootball, (3) Football Degenerative, and (4) Inactive. Defendants rely upon the terms of the Retirement Plan to speak for themselves with respect to any differences among the categories. Defendants deny each and every remaining allegation in Paragraph 3.

4. Defendants admit that Plaintiff is a former professional football player, but Defendants currently lack knowledge or information sufficient to form a belief about the truth of Plaintiff's allegation that he "suffered thousands of hits and dozens of injuries" during his professional football career. Defendants admit that following Plaintiff's application(s) for T&P

benefits, Plaintiff was evaluated by several Plan neutral physicians; this included an examination by a Plan neutral orthopedist and a Plan neutral neurologist. Defendants deny each and every remaining allegation in Paragraph 4 and, to the extent that Plaintiff relies upon selective quotes from certain documents in the administrative record to support his allegations, Defendants deny Plaintiff's characterization of those quotes/documents, which when presented in proper context will speak for themselves.

5. Defendants currently lack knowledge or information sufficient to form a belief about the truth of Plaintiff's allegation that he "worked for a decade after leaving the NFL." Defendants admit that a "Notice of Decision" dated June 21, 2011 indicates that an Administrative Law Judge found Plaintiff to be "disabled," for purposes of the Social Security disability program, "as of October 29, 2008 because [his] impairment or combination of impairments is so severe that [he] cannot perform any work existing in significant numbers in the national economy." Defendants deny each and every remaining allegation in Paragraph 5 and, to the extent that Plaintiff relies upon selective quotes from certain documents in the administrative record to support his allegations, Defendants deny Plaintiff's characterization of those quotes/documents, which when presented in proper context will speak for themselves.

6. Paragraph 6 contains conclusions of law that require no response. To the extent a response is required, Defendants deny each and every allegation in Paragraph 6.

7. Defendants admit that Plaintiff is a resident of Florida. Defendants currently lack knowledge or information sufficient to form a belief about the truth of Plaintiff's allegation that he "has been unemployed since 2007." Defendants admit that Plaintiff receives Inactive T&P

benefits from the Retirement Plan, and those Inactive benefits have been paid to Plaintiff in monthly installments, effective October 1, 2010.

8. Defendants admit that the Retirement Plan is an ERISA-governed pension and welfare benefit plan designed to provide various retirement, disability, and related benefits to Players. Defendants deny Plaintiff's allegations regarding the Supplemental Plan. Answering further, Defendants state that the Supplemental Plan is an employee welfare benefit plan within the meaning of Section 3(1) of ERISA, and it is designed to provide disability benefits (in excess of disability benefits provided by the Retirement Plan) to certain eligible Players.

9. Paragraph 9 contains conclusions of law that require no response. To the extent a response is required, Defendants admit that this Court has subject-matter jurisdiction over Plaintiff's cause of action.

10. Paragraph 10 contains conclusions of law that require no response. To the extent a response is required, Defendants admit that venue is proper. Defendants deny that Plaintiff was wrongfully denied benefits.

11. Defendants admit that the Disability Initial Claims Committee ("DICC") is empowered to and does render initial decisions on all claims for benefits under the Retirement Plan. Defendants admit that the DICC then consisted of two members: one appointed by the NFL Players Association (representing Players), and one appointed by the NFL Management Council (representing NFL owners). Defendants admit that the Retirement Board is empowered to and does render final decisions on review on all claims for benefits under the Retirement Plan. Defendants admit that the Retirement Board consists of seven members: three voting members appointed by the NFL Players Association (representing Players), three voting members

appointed by the NFL Management Council (representing NFL owners), and the Commissioner of the NFL (an ex-officio, non-voting member). Defendants admit that the Retirement Board meets quarterly. Defendants deny that the DICC and/or the Retirement Board decide claims for benefits under the Supplemental Plan. Answering further, the Supplemental Plan and its Disability Board are largely irrelevant to Plaintiff's cause of action, which challenges the propriety of a final decision issued by the Retirement Board under the terms of the Retirement Plan.

12. Defendants admit that the terms of the Retirement Plan and the Supplemental Plan are set forth in separate Plan Documents. Defendants deny each and every remaining allegation in Paragraph 12. Answering further, Defendants state that the Retirement Board has limited power to amend the Retirement Plan. Neither the Retirement Board nor the Disability Board has the power to amend the Supplemental Plan. The National Football League Players Association and the National Football League Management Council, acting jointly, may amend the Retirement Plan and the Supplemental Plan.

13. Admitted, with respect to the Plan Document for the Retirement Plan, effective April 1, 2009.

14. Denied.

15. Defendants deny each and every allegation in Paragraph 15 and, to the extent that Plaintiff relies upon selective quotes from the Plan Document for the Retirement Plan to support his allegations, Defendants deny Plaintiff's characterization of those quotes, which when presented in proper context will speak for themselves.

16. Defendants deny each and every allegation in Paragraph 16 and, to the extent that Plaintiff relies upon selective quotes from the Plan Document for the Retirement Plan to support his allegations, Defendants deny Plaintiff's characterization of those quotes, which when presented in proper context will speak for themselves.

17. Defendants deny each and every allegation in Paragraph 17 and, to the extent that Plaintiff relies upon selective quotes from the Plan Document for the Retirement Plan to support his allegations, Defendants deny Plaintiff's characterization of those quotes, which when presented in proper context will speak for themselves.

18. Defendants deny each and every allegation in Paragraph 18 and, to the extent that Plaintiff relies upon selective quotes from the Plan Document for the Retirement Plan to support his allegations, Defendants deny Plaintiff's characterization of those quotes, which when presented in proper context will speak for themselves.

19. Defendants admit that Section 5.1(c) of the Retirement Plan sets forth the requirements for Football Degenerative benefits, and those requirements speak for themselves. Defendants deny each and every remaining allegation in Paragraph 19.

20. Denied.

21. Defendants admit that Plaintiff was born in 1963; that he graduated from college; and that he played nine seasons of professional football for various NFL Clubs. Defendants currently lack knowledge or information sufficient to form a belief about the truth of Plaintiff's allegation that he "endured thousands of hits, dozens of injuries, multiple concussions, and five different operations on his right and left knees." Defendants deny each and every remaining allegation in Paragraph 21.

22. Defendants currently lack knowledge or information sufficient to form a belief about the truth of Plaintiff's allegation concerning the reason he retired from professional football, his educational experience after his professional football career, and the exact nature and extent of his employment after professional football. Defendants admit that Plaintiff applied for T&P benefits on two occasions: once in March 2009, and again in December 2010. Defendants admit that Plaintiff's March 2009 application was denied. Defendants deny each and every remaining allegation in Paragraph 22.

23. Defendants admit that following Plaintiff's second application for T&P benefits (filed in December 2010), Plaintiff was evaluated by several Plan neutral physicians; this included an examination by Plan neutral neurologist, Dr. Adam DiDio, on February 17, 2011. Defendants deny each and every remaining allegation in Paragraph 23 and, to the extent that Plaintiff relies upon selective quotes from certain documents in the administrative record to support his allegations, Defendants deny Plaintiff's characterization of those quotes/documents, which when presented in proper context will speak for themselves.

24. Defendants deny each and every allegation in Paragraph 24 and, to the extent that Plaintiff relies upon selective quotes from certain documents in the administrative record to support his allegations, Defendants deny Plaintiff's characterization of those quotes/documents, which when presented in proper context will speak for themselves.

25. Defendants currently lack knowledge or information sufficient to form a belief about the truth of Plaintiff's allegations concerning "positions" taken and statements made by other entities in litigation against those other entities. Answering further, Defendants state that, to the extent that Plaintiff relies upon selective quotes from certain documents in the

administrative record to support his allegations, Defendants deny Plaintiff's characterization of those quotes/documents, which when presented in proper context will speak for themselves. To the extent Plaintiff quotes from and/or relies upon documents outside the administrative record, Defendants reserve the right to strike those documents and any allegations based upon them.

26. Defendants currently lack knowledge or information sufficient to form a belief about the truth of Plaintiff's allegations concerning the "contradictions" between certain "positions" taken and statements made by other entities in litigation against those other entities. Defendants admit that Plaintiff's December 2010 application for T&P benefits was denied on March 9, 2011. However, Defendants deny that the DICC "ruled that [Plaintiff] was not disabled." Answering further, Defendants state that, when considering Plaintiff's December 2010 application for T&P benefits, the DICC members deadlocked with respect to whether Plaintiff was totally and permanently disabled under the terms of the Retirement Plan. This resulted in a "deemed denial" under Section 8.6 of the Retirement Plan, effective April 1, 2009. Defendants admit that Plaintiff appealed the DICC's initial decision on his December 2010 application for T&P benefits to the Retirement Board. Defendants deny each and every remaining allegation in Paragraph 26.

27. Defendants admit that a "Notice of Decision" dated June 21, 2011 indicates that an Administrative Law Judge found Plaintiff to be "disabled," for purposes of the Social Security disability program, "as of October 29, 2008 because [his] impairment or combination of impairments is so severe that [he] cannot perform any work existing in significant numbers in the national economy." Defendants deny each and every remaining allegation in Paragraph 27 and, to the extent that Plaintiff relies upon selective quotes from certain documents in the

administrative record to support his allegations, Defendants deny Plaintiff's characterization of those quotes/documents, which when presented in proper context will speak for themselves.

28. Defendants admit that the Retirement Board awarded Plaintiff Inactive T&P benefits in a decision letter dated August 10, 2011, which states, in pertinent part, that "the Retirement Board found that the record did not support a finding of total and permanent disability prior to March 31, 2010," *i.e.*, the 15-year cut-off for Football Degenerative benefits. Defendants deny each and every remaining allegation in Paragraph 28 and, to the extent that Plaintiff relies upon selective quotes from certain documents in the administrative record to support his allegations, Defendants deny Plaintiff's characterization of those quotes/documents, which when presented in proper context will speak for themselves.

29. Admitted.

30. Defendants deny each and every allegation in Paragraph 30 and, to the extent that Plaintiff relies upon selective quotes from the Plan Document for the Retirement Plan or other documents in the administrative record to support his allegations, Defendants deny Plaintiff's characterization of those quotes/documents, which when presented in proper context will speak for themselves.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Defendants incorporate the answers stated in Paragraphs 1 through 35 as if fully set forth herein.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

In addition to the responses set forth in paragraphs 1 through 40 of this Answer, Defendants deny each and every allegation of fact and conclusion of law in the Complaint not otherwise specifically admitted in this Answer, and Defendants deny that Plaintiff is entitled to the relief demanded in the Complaint or to any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claim is barred, in whole or in part, by the applicable statute of limitations.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

The Retirement Board's determination was consistent with the terms of the Plan Document, supported by substantial evidence, and otherwise reasonable. Therefore, the Retirement Board's determination was neither arbitrary and capricious nor an abuse of discretion, and it must be upheld.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that judgment be entered in their favor and against Plaintiff, that the Court award Defendants all costs and fees incurred by them in defending against Plaintiff's claims, and that the Court grant them such other and further relief as the Court deems just and proper.

Dated: June 17, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'MJ Prame', is written over a horizontal line.

Michael J. Prame, Bar No. 12994

Michael L. Junk, *pro hac vice*

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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on this 17th day of June, 2015, the foregoing ANSWER TO PLAINTIFF'S COMPLAINT was filed by CM/ECF, which will provide notice of the filing to the following counsel of record for the plaintiff:

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